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## FREDERICK COUNTY PLANNING COMMISSION

### November 9, 2011

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**TITLE:** **AT&T: Harman Gap-Yarworth Parcel**

**FILE NUMBER:** **SP-11-10** (AP#'s 12049, APFO 12050, FRO 12051)

**REQUEST:** **Site Plan Approval** (Requesting approval for new 156' tall monopole and the placement of a 50'x50' fenced compound)

**PROJECT INFORMATION:**

LOCATION: 14818 Quirauk School Road  
ZONE: Resource Conservation (RC)  
REGION: Thurmont Planning Region  
WATER/SEWER: No Planned Service (NPS)  
COMP. PLAN/LAND USE: Resource Conservation

**APPLICANT/REPRESENTATIVES:** (as applicable)

APPLICANT: New Cingular Wireless PCS LLC  
OWNER: Rudolph Yarworth  
ENGINEER: BC Architects & Engineering  
ARCHITECT: N.A.  
ATTORNEY: N.A.

**STAFF:** Tolson DeSa, Principal Planner  
Community Development Division

**RECOMMENDATION:** **Conditional Approval**

*Attachments:*

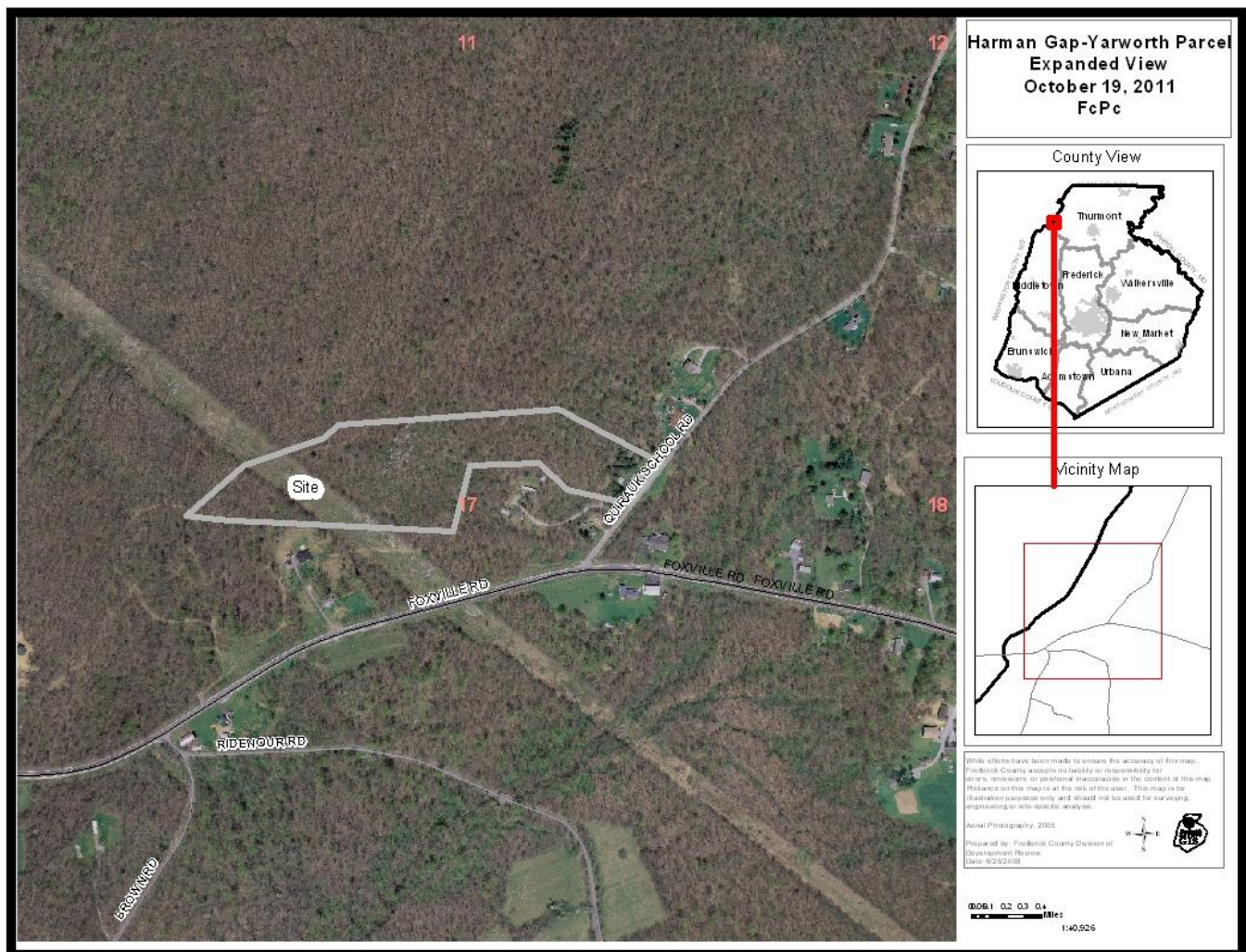
*Exhibit #1: Site Plan Rendering*

*Exhibit #2: B-11-03 Findings & Decision*

*Exhibit #3: Alternative Landscape Plan Modification Justification Statement*

**BACKGROUND:**

Up to three carriers could be accommodated on the proposed tower and in the fenced portion of the equipment compound according to the Applicant. The Applicant has provided materials to address the general requirements of Sec. 1-19-3.210 (B), the specific criteria of Sec. 1-19-8.332, and the specific design criteria of Sec. 1-19-8.420.



**Land Use and Zoning Review:** Communication towers in the RC zone require Special Exception approval by the Board of Appeals (BOA). The BOA approved the special exception for this application on June 24, 2011 (BOA Case 11-03 See attached Exhibit #2).

**Access/Circulation, Parking Spaces, Loading Area and Road Frontage Improvements:** The Applicant proposes to access the site from Quirauk School Road via an existing 12' wide gravel access point and proposed 12' gravel roadway. The Applicant also proposes no additional parking or loading spaces. Staff agrees that because of limited vehicle trips to the site for this particular use, no parking is needed.

**Dimensional Requirements/ Bulk Standards:** The standard dimensional and bulk requirements for communications towers in a Resource Conservation zone are as follows:

<i>Use Classification</i>	<i>Minimum Lot Area</i>	<i>Lot Width</i>	<i>Setback values</i>	<i>Height</i>
<i>Communications Tower</i>	N.A.	N.A.	<i>§ 1-19-8.420.2 (2) Setbacks from all properties zoned other than residential shall be determined by the approving body, but shall not be less than the fall zone of the tower as defined by the engineering specifications.</i>	<i>§ 1-19-8.420.2. (D) The tower height may exceed the maximum height permitted within the HS, GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.</i>

With regard to setbacks, Sheet A-0 of the Site Plan application demonstrates that the fall zone is a minimum of 150 feet from all property lines.

**Utilities:** The parcel is classified as No Planned Service. However, this site will not require water or sewer services because this will be an un-manned facility.

### **ENVIRONMENTAL ANALYSIS:**

**Open/Green Space and Floodplain Issues:** There are no open or green space requirements in the RC zone other than those noted above. Also, there are no hydrological or water buffer elements on this lease area.

**Landscaping:** In accordance with Zoning Ordinance Section 1-19-6.400(I), the Applicant is requesting a modification from all of the landscape screening standards for the fenced compound. The Applicant cites the remote location of the proposed monopole as well as the existing surrounding forested areas located on this site. Due to the remote location and existing vegetation on this site, Staff supports this modification request.

**Storm-water Management (SWM) Design:** This project was tested with regard to the requirements of the Maryland Stormwater Management Act of 2007 (SWM 2007), which became effective May 4, 2010. The Applicant must receive final approval of its Stormwater Development Plan prior to final stamp and signature of this site plan.

**Forest Resource Ordinance (FRO):** There are no priority systems on site. FRO mitigation requirements will be satisfied by either a forest fee-in-lieu payment of \$18,347.47 or purchase of 0.78 acres of new banking credits or 1.56 acres of existing forest banking credits.

### **MISCELLANEOUS DESIGN and ADMINISTRATIVE ISSUES:**

**Lighting:** This tower will not require lighting, other than FAA emergency lighting requirements.

**Signage:** The Applicant proposes no signage with this application other than the six sq. ft. identification sign required by the Zoning Ordinance.

**Fencing:** The Applicant is providing an 8' chain link fence topped with 1 foot of barbed wire.

**Guarantee:** In accordance with §1-19-8.420.2(B), the Applicant must post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release. The guarantee is to ensure proper removal of the tower if it ceases to be used for six months or more. The Applicant has noted its intent to execute this monetary guarantee but has not added this statement to the Site Plan.

**Propagation Studies:** As required by § 1-19-8.420.2, the Applicant has included propagation studies in the "Communications Tower Planning Commission Submittal" packet used by the Board of Appeals indicating *before* and *after* coverage information.

**Photo-simulation Studies:** As required by § 1-19-8.420.2, the Applicant has included photo-simulation in the "Communications Tower Planning Commission Submittal" packet showing *before* and *after* views from several vantage points.

**ADEQUATE PUBLIC FACILITIES ORDINANCE (APFO):**

**In General:** This project was reviewed for potential impacts on schools, water/sewer and roads. This project was determined to generate no impacts on schools, utilities or traffic.

- ☐ **Schools:** The non-residential nature of this project has no impact on schools.
- ☐ **Water and Sewer:** The un-manned operations will require no water or sewer facilities.
- ☐ **Traffic:** The traffic engineer has indicated that less than one peak-hour trip will be generated on this site and is therefore exempt.

Therefore, this project is exempt from APFO.

**OTHER AGENCY COMMENTS:**

<b><i>Agency</i></b>	<b><i>Comment</i></b>
<b><i>Engineering Section, DPDR</i></b>	Conditional Approval.
<b><i>Planning Section</i></b>	Conditional Approval
<b><i>Traffic Engineering</i></b>	Approved.

**FINDINGS:**

The Applicant is requesting approval of a Site Plan (AP # 12049) for a communications tower monopole 150' in height with a 6' extension for lightning rod and antennae extensions, and ground facilities.

Staff finds that the Site Plan application meets and/or will meet all applicable Zoning, Subdivision, APFO and FRO requirements once all Staff and Agency comments and conditions are met or mitigated. With certain conditions of approval added, the Staff offers no objection to approval.

- 1) Site Plan approval can be given for a three-year period from the date of FcPc approval.
- 2) This project is exempt from the APFO.
- 3) The Applicant must post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release.

**RECOMMENDATION:**

The motion for approval of this site plan should include the following:

- 1) Site Plan approval can be given for a three-year period from the date of FcPc approval, and
- 2) The site plan application is exempt from APFO requirements, and
- 3) Approval of a modification to Zoning Ordinance §1-19-6.400.I to provide an alternative landscaping plan due to the remote location of the site and existing surrounding forest.

Should the FcPc choose to approve this Site Plan application (AP # 12049), the Staff would recommend adding the following conditions to the approval:

- 1) Comply with Agency comments as this project moves through the development process.
- 2) Post an acceptable guarantee with the County on forms approved by the Zoning Administrator prior to permit release and note this on the site plan.
- 3) Provide annual updates to the Zoning Administrator of emergency contact information for the tower owner and all carriers on the tower.
- 4) The Applicant must receive final approval of the Stormwater Development Plan, prior to final stamp and signature of this site plan.
- 5) Note on the site plan that the FCPC has granted the following Applicant requested Zoning Ordinance Modification Requests:
  - a. Zoning Ordinance Section 1-19-6.400.I to provide an alternative landscaping plan due to remote location of the site and existing surrounding forest.

[illegible]

**IN THE MATTER OF:** \* **BEFORE THE**  
**THE APPLICATION OF** \* **BOARD OF APPEALS**  
**New Cingular Wireless PCS, LLC** \* **FOR FREDERICK COUNTY, MD**  
**d/b/a AT&T Mobility c/o Saul** \* **CASE NO. B-11-03**  
**Ewing LLP** \*

\* \* \* \* \*

### **FINDINGS AND DECISIONS**

This matter comes before the Board on the application of New Cingular Wireless PCS, LLC (hereinafter "the Applicant") which is represented by Greg Rapisarda, Esquire of Saul Ewing LLP for a special exception to authorize a communications tower pursuant to Sections 1-19-3.210, 1-19-8.332 and 1-19-8.420 of the Frederick County Code.<sup>1</sup> The property for which the special exception is sought is owned by Rudolph Yardworth with whom the applicant has a Lease Option Agreement (entered into the record), consists of 18.75 acres of land, more or less, and is located on the west side of Quirauk School Road approximately 500 ft. northwest of its intersection with Foxville Rd. (hereinafter "the Property"). The Property is further identified as Parcel 42 on Frederick County Tax Map No. 17 and is situated in a Resource Conservation zoning district. The project for which the Applicant seeks a special exception is a 156 ft. high telecommunications monopole with a 6 ft. lightning rod and a 50' x 50' equipment compound at the base.

The hearing before the Board of Appeals commenced on April 28, 2011 prior to which the members of the Board visited and viewed the Property in accordance with Section 1-19-3.200.2(B) of the Frederick County Code. At the hearing, testimony was presented by Mr. Rick Brace, Principal Planner II for Frederick County and Mr. Larry Smith, Frederick County Zoning Administrator and Janet Davis, Historic Sites Planner. The Applicant presented its case through testimonial and documentary evidence. Ms. Davis observed that some errors appeared in the NEPA report regarding historic sites and the Board directed the Applicant to correct the points and return. The Applicant represented, both in its application and before the Board, that the height of the proposed tower will be 150 feet with a 6 foot lightning rod. The overall height of the tower, therefore, will not exceed the 199 feet height required by the provisions of the Zoning Code.

With its application, and as stated at the hearing, the applicant submitted as an exhibit computer modeling information which it used in selecting the Property as the site for its project and propagation studies showing service areas in the county. The Applicant also submitted a listing of alternative sites which it considered and stated why they had not been selected over the Property. Also submitted into the record were photographs of the Property, photographic documentation that a balloon test had been conducted, and a National Environmental Policy Act (NEPA) checklist which was purportedly prepared in accordance with section 206 of that Act.

The evidence and representations presented by the Applicant was that it is a telecommunications carrier. It is a company which provides infrastructure or facilities for itself and other telecommunications carriers. Testimony was offered regarding the Applicant's existing and proposed network in the County.

<sup>1</sup> These sections of the Frederick County Code are set forth in the Appendix hereto.



The Applicant presented evidence that it had advertised the proposed project and had sent written notice to all abutting property owners regarding an informational hearing which the Applicant in fact held within two weeks of submitting its application.

The Applicant returned to the Board at its May 26 hearing and offered testimony that it had updated the historic sites report and that, with the corrections, they believed they had satisfied the criterion. Ms. Davis concurred. Evidence presented to the Board also included the representation that the tower will be a grey monopole which will be designed for co-location of antennae from other cellular carriers. No lighting will be placed on the tower. Evidence was also submitted by Ms. Janet Davis that the tower will not be situated on any land which is designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

After hearing and considering all of the evidence submitted into the record and presented at the hearing, the Board finds that the Applicant has submitted all of the required documents to support its application and that it has complied with the procedures as set forth in the applicable sections of the Frederick County Code. The Board noted the base and compound would be located on level area less than 25% slope, although the driveway would traverse some steeper areas.

The Board finds that the proposed special exception use is consistent with the purpose and intent of the Comprehensive Development Plan as telecommunications are an important part of community life. The Board also notes that telecommunication towers are a permitted use in the Resource Conservation zoning district, albeit by special exception.

The Board also finds that the nature and intensity of the proposed use will be in harmony with the appropriate and orderly development of the neighborhood. The Board is also mindful of the fact that the Property is in the direct vicinity of electrical power lines, with accompanying towers, which traverse the neighborhood. These towers and lines were viewed by the members of the Board as they traveled to the Property and through the adjoining neighborhood. Based upon this, the Board finds that the installation of the 156 foot tower will not substantially alter or detract from the orderly development of the neighborhood. In addition, the Board notes that the presence of the tower will not preclude the continued use of the Property for resource conservation uses, nor will it preclude the use of any adjoining properties from their currently permitted uses.

The evidence presented in this case was that the tower will not emit any fumes, vibration or noise, and the Board accepts this. The adverse effects, if any, on neighboring properties will be primarily in the nature of the visual impact of the proposed tower; however, the tower will be situated in a heavily wooded area of mature vegetation, removed from the public roads and not easily visible to those on nearby properties. A letter dated April 13, 2011 from the United States Department of the Interior states that that agency had the opportunity to evaluate the potential impact of the tower on the Appalachian Trail which, at its closest point, is approximately 1.2 miles from the proposed tower. That agency viewed the area during the Applicant's balloon test and, for the most part, found that the tower will not be visible from the Trail except minimally at one location. The fact that this use is permitted only as a special exception presumes that the use will have some adverse impact on surrounding properties; however, under the *Shultz vs. Pritts* and *Peoples' Counsel vs. Loyola* cases, the question is



whether the adverse impact at this location will be greater than the adverse impact at any other location with the zoning district. The Board does not find that the adverse effects of the tower at this location will be any greater than they would be at any other location in the Resource Conservation zoning district.

The evidence submitted reflects that there will be minimal vehicular traffic to the site of the project because the site will be unmanned and only occasional trips by car or SUV to the site will be necessary for maintenance purposes. The evidence reflects that the road on which the project will be located, i.e., Quirauk School Road, is a paved, two-lane road. Therefore, the Board finds that the road is adequate for this project and any parking requirements can be met. Any parking and access details will be addressed by the Planning Commission at the site plan stage.

The Applicant further acknowledged that it would comply with all future safety and other requirements for the tower as required by the Frederick County Code and would comply with the requirements of providing contact information as requested by the staff.

Based upon all of the foregoing, the Board concludes that the Applicant has satisfied the requirements of the Frederick County Code and other applicable law to grant the application for the special exception. The application is granted on the following specific conditions:

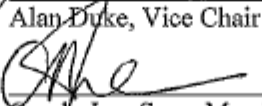
1. The Applicant shall provide contact information to the Zoning Administrator on an annual basis, such information to include the names, contact telephone numbers and addresses of the Applicant and of those carriers or entities utilizing the tower.
2. The Applicant will address all agency comments.


A motion to approve the application for special exception on these stated conditions was made by Ms. Sepe and seconded by Mr. Bowersox. My Dyjak offered an amendment requiring the signs as noted and Ms. Sepe accepted it as part of her motion. The motion passed unanimously.

Adopted by the Board of Appeals on the 24<sup>th</sup> day of June, 2011.

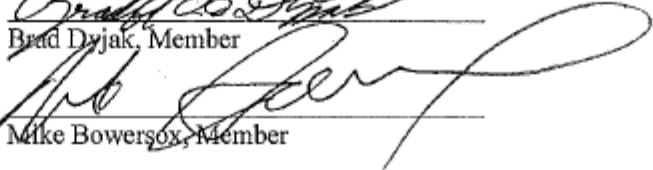
  
John R. Clapp, Chair

ABSENT

  
Alan Duke, Vice Chair

  
Carole Jaar Sepe, Member

  
Brad Dyjak, Member

  
Mike Bowersox, Member

**NOTE:** Frederick County Code, Section 1-19-3.210(I) provides that:

“A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.”

#### **APPENDIX**

##### **Frederick County Code, Section 1-19-3.210(B):**

(B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

(1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and

(2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

(3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

(4) Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

(5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

##### **Frederick County Code, Section 1-19-8.332:**

The following provisions shall apply to communication towers in RC and A Districts.

(A) The tower height may exceed the maximum height permitted within the RC and A Districts after a determination by the approving body that its visual profile and appearance would make

no substantial change in the character of the area, provided, however, that in no event shall the maximum allowed tower height exceed 199 feet.

(B) All applications for a special exception shall include:

- (1) Computer modeling information used in selecting the site;
- (2) Listing of alternative sites considered and why not selected;
- (3) Photographs of the existing conditions of the site and area;
- (4) Photo documentation that a balloon test has taken place at the proposed site location.

(C) All applications for a tower shall be accompanied by a non-binding 5 year plan of the applicant or the locating provider, showing the existing and proposed communications network within the county.

(D) A NEPA (National Environmental Policy Act) checklist prepared in accordance with section 106 of NEPA shall be provided as part of all applications.

(E) The applicant must publicize the proposal, using a block advertisement of a size acceptable to staff, which includes a map showing the site and a 1 mile radius and must hold an informational meeting in the area of the tower within 2 weeks after submitting the application. Written notice of such meeting shall be provided to all abutting property owners of the property on which the site is located and any homeowners/community associations within the 1 mile radius.

(F) Setbacks for communications towers shall be as follows: setback from all property lines shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet from any adjoining residential structure. This setback distance may be modified by the Board of Appeals.

(G) The zoning certificate issued for a special exception shall be valid for a period of 5 years from the date that the decision of the Board of Appeals is signed. This zoning certificate shall be renewed for additional 5 year periods after review by the Board of Appeals at a regular meeting. The following are the only grounds on which renewal of a certificate may be denied.

- (1) The permittee has failed to comply with the conditions of the special exception approval.
- (2) The facility has not been maintained in a safe condition.
- (3) The Board of Appeals determines that the use of the tower for wireless communications has ceased for a period of 6 months.

(H) All special exception approvals must also comply with the requirements of §1-19-8-420.2.

**Frederick County Code, Section 1-19-8.420.2:**

The following design criteria shall apply to all communication towers in the HS, GC, ORI, LI, GI, MM and non-residential MXD and PDE zoning districts as well as special exceptions in the RC and A Districts.

(A) The applicant and the property owner shall be responsible for maintaining the tower in a safe condition.

(B) The tower shall be utilized continuously for wireless communications. In the event the tower ceases to be used for wireless communications for a period of 6 months, the approval will terminate. The property owner shall remove the tower within 90 days after termination. The property owner shall insure the tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

(C) All towers shall be designed for co-location, which shall mean the ability of the structure to allow for the placement of antennae for 2 or more carriers. This provision may be waived by the approving body if it is determined that co-location will have an adverse impact on the surrounding area.

(D) The tower height may exceed the maximum height permitted within the HS, GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.

(E) All applications for approval of communications towers shall include:

(1) Justification from the applicant as to why the site was selected;

(2) Propagation studies showing service area and system coverage in the county;

(3) Photo simulations of the tower and site, including equipment areas at the base from at least 2 directions and from a distance of no more than 1 mile.

(F) As part of the site plan review, screening and fencing may be required around the base of the tower structure and any equipment buildings.

(G) The appearance of the tower structure shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific reference to size, color and silhouette properties. The decision of the approving authority shall be final.

(H) No lighting is to be placed on the tower unless specifically required by the Federal Aviation Administration.

(I) Monopoles shall be the preferred tower structure type within the county.

(J) All tower sites shall be identified by means of a sign no larger than 6 square feet affixed to the equipment building or fence enclosure. Said sign shall identify the tower owner and each locating provider and shall provide the telephone number for a person to contact in the event of an emergency.

(K) Site plan approval for the tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within the zoning ordinance.

(L) No towers are permitted within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

(M) A copy of all reports including the environmental assessment, NEPA review, and SHPO review, as required by or provided to the Federal Communications Commission, shall be included as part of the application.

(N) Towers should be sited within or adjacent to areas of mature vegetation and should be located down slope from ridge lines and towards the interior of a parcel whenever possible and only should be considered elsewhere on the property when technical data or aesthetic reasons indicate there is no other preferable location.

(O) All applications shall include information as to how the applicant has addressed the visual impact of the tower on all county designated preservation areas, such as: rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, Appalachian Trail, historic sites and sites eligible for designation.

(P) Towers may be permitted within the Mineral Mining (MM), non-residential Mixed Use Development (MXD), and non-residential PDE floating zones with the approval of the Planning Commission. Towers shall not be permitted within residential, PUD, PDR, residential MXD, or PDE Districts with a residential component.

(Q) Communications towers in existence on the effective date of this ordinance (Ord. 99-14-241) shall not be required to comply with these provisions, except in the event they increase the height.

(R) Except as provided in § 1-19-8.332(F) setbacks for communications towers shall be as follows.

(1) Setback from all property zoned residential shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet. Setback distance may be modified by the approving body.

(2) Setbacks from all properties zoned other than residential shall be determined by the approving body, but shall not be less than the fall zone of the tower as defined by the engineering specifications.



## ACO PROPERTY ADVISORS, INC.

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August 18, 2011

Mr. Tolson DeSa, Principal Planner  
Community Development Division  
Frederick County, Maryland  
30 North Market Street  
Frederick, MD 21701

RE: Site Plan Approval for New Cingular Wireless PCS at 6721 Debold Rd, Sabillasville,  
MD – Request for Modification to Zoning Ordinance 1-19-6.400.I Landscaping and  
Screening

Dear Mr. DeSa,

ACO Property Advisors Inc. on behalf of New Cingular Wireless PCS LLC "AT&T" provides  
site acquisition and zoning services to extend AT&T wireless coverage throughout Frederick  
County, Maryland.

Currently, the proposal for AT&T site: Sabillasville located at 6721 Debold Rd, Sabillasville, MD  
21780, is undergoing a Type I Site Plan Approval. AT&T is requesting consideration from The  
Frederick County Planning Commission, due to the sites remote location, existing trees and  
vegetation present at the site, the existing landscaping buffering and screening standards be  
modified to not require additional landscaping, buffering or screening. This could be  
accomplished through:

*Frederick County Zoning Ordinance § 1-19-6.400 Landscaping and screening*

*(I) The Planning Commission may modify the minimum landscaping, buffering, and screening  
standards where a specific finding is made that the required standards result in a practical  
difficulty, and where an alternate landscaping, buffering, and screening plan is approved by the  
Planning Commission.*

Thank you for taking the time to hear our request, and review our application. Please let me  
know if you require additional information or have any questions or comments.

Sincerely,

Steven R. Kinley  
Director of Wireless Services  
(518) 461-4485  
Steve@ACOPROPERTYADVISORS.COM

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**Real Estate  
Consultants • Development • Brokerage • Wireless Services**